



THE COMMONWEALTH OF MASSACHUSETTS
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March 7, 2002

Sent via e-mail, hand delivery and/or U.S. Mail

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Network Plus, Inc. Investigation, D.T.E. 02-15

Dear Secretary Cottrell:

The Attorney General submits this letter as his Initial Brief to address issues raised by the bankruptcy of Network Plus, Inc. ("Network Plus" or the "Company"), particularly in relation to uninterrupted telecommunications services for the Company's Massachusetts customers.¹ The Department of Telecommunications and Energy ("Department") should reject any request by Network Plus to shorten the Department's required sixty-day notice for termination of service. The Department, however, should also prepare for the possibility that service will be terminated, and ask Verizon to perform the same transition service for Network Plus customers that it offered to Cavalier customers in D.T.E. 02-14. In addition, if customers must move to other carriers as a result of the bankruptcy, Network Plus should give priority in the transfer process to those customers that provide critical safety, health, and welfare services.

1. PROCEDURAL HISTORY

¹ Network Plus serves approximately 12,000 residential, small and medium-sized business in the Commonwealth, including a number of hospitals, nursing homes, rehabilitation facilities, ambulance companies, and medical centers, a major teaching hospital, Massachusetts state agencies and court systems, municipal governments, and the Consulates General of foreign nations, who collectively have about 75,000 business lines. *Vote to Open Investigation*, p. 1. See also Tr. pp. 15-16, 18.

On February 2, 2002, Network Plus filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. On February 13, 2002, Network Plus filed a motion seeking bankruptcy court authorization and approval of an auction sale of substantially all of its

telecommunications services assets. On February 20, 2002, the Department, pursuant to its authority under G. L. c. 159, §§ 12 and 16, opened an investigation into the regulations, practices, equipment, appliances and service of Network Plus, Inc. The Department was concerned that some or all of Network Plus' customers may lose service without adequate notice as a result of the Network Plus bankruptcy. The Department held an emergency evidentiary hearing on February 25, 2002. The Attorney General and several parties intervened in the proceeding and participated in the hearings.²

During the hearing, the Company testified that it had not yet reached a final decision on a need to shut down its network and thus terminate the telecommunications services of its customers.³ Tr. pp. 30, 92. The Company indicated that it anticipated auctioning off its assets in a manner that would transfer the assets and customers to a buyer who would keep the service running. Tr. pp. 45, 49. The Company has signed a preliminary agreement to sell all of its assets and customers to Broadview, contingent on Broadview being the winning bidder at the bankruptcy auction. Tr. pp. 29, 46, 49; RR DTE-NP-1. Network Plus sent its customers letters advising them of its bankruptcy and the possible change in service to Broadview. Tr. pp. 33-34; RR DTE-NP-4.

In accordance with the bankruptcy auction process, bids were due on March 6, the auction will be conducted on March 8, and the bankruptcy court will select the winning bid on March 13. Tr. p. 24. In the absence of a successful bid, the Company stated that it would send its customers notices of discontinuance of service shortly after March 13, 2002, and terminate service by April 13, 2002. Tr. pp. 26, 99. If Broadview is the successful bidder, Network Plus will execute a purchase and sale agreement that will further specify the terms of sale. Tr. pp. 109-110; RR AG-NP-1.

2. DEPARTMENT RULES REQUIRE SIXTY DAYS NOTICE PRIOR TO TERMINATION OF SERVICE

The Department recently revised its rules regarding carrier notices of termination of service to customers in D.T.E. 02-14. Tr. p. 27. Carriers who intend to terminate telecommunication service to Massachusetts customers must give the customers and the Department at least sixty days' written

² Network Plus, RNK, Inc., Paetec Communications, Inc., XO Massachusetts, Inc., Conversent Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., and Global NAPs, Inc., intervened. No member of the public appeared at the hearing to voice concerns to the Department about the Company's bankruptcy and related risks of service interruptions. Customers have, however, contacted the Company directly about the bankruptcy. Tr. pp. 33, 42.

³ The Company observed, however, that pursuant to the terms of its debtor-in-possession ("DIP") financing agreement, it would exhaust all cash reserves by April 13, 2002, and would lose its right to use cash collateral. Tr. pp. 44, 99.

notice. *Broadview Investigation*, D.T.E. 02-14, Order, pp. 10-11 (February 20, 2002) (“Broadview Order”). Network Plus indicated that it would seek a waiver of the sixty day rule if no successful bidder were found. Tr. at 51, 77.

The Department should reject any attempt by Network Plus to seek a waiver of the sixty day notice requirement. Given that Network Plus knows about the notice requirement, and can plan for a sixty-day notice period, the Company has not demonstrated good cause which could be used as the basis for a request to shorten the notice period. 220 C.M.R. §§ 1.00, 1.01(4) (movant must show good cause before Commission will consider waiving Department’s rules).

The Department created the sixty-day rule precisely for the reasons that are evident in this case. Some customers, such as the 412 voice and data T-1 customers, may not be able to find replacement service in less than sixty days. Tr. pp. 62-63. Often it may take four to six weeks to reestablish a T-1 line. Tr. pp. 64, 118. Public health, safety and welfare may be jeopardized by the loss of these business’ phone lines. Tr. p. 69. Failure to give customers sixty days’ notice may create the same unfortunate and difficult circumstances created by Broadview in D.T.E. 02-14. Consequently, the Department should not allow Network Plus to give less than sixty days’ notice to customers.

3. CUSTOMERS PROVIDING PUBLIC HEALTH AND SAFETY SERVICES SHOULD BE GIVEN PRIORITY

Termination of service would cause major disruptions for the Company’s customers, many of whom provide critical public health and safety services. In *Broadview Networks, Inc.*, D.T.E. 02-14, Verizon expressed a willingness to facilitate the transfer of Cavalier customers to alternative service providers within two weeks. *Broadview Order*, p. 10. The Department should request that Verizon perform the same service for Network Plus customers and order Network Plus to provide the required circuit identification information to Verizon within 24 hours and offer Verizon whatever additional assistance it requires to complete the transfer. Tr. p. 102.

If Network Plus terminates service, the Company will have to choose which customers are transferred first. Tr. pp. 53, 58-60, 116-117; RR DTE-NP-2. The Department should require Network Plus to give priority to the transition of those customers who provide critical health, welfare, or safety services. There is a compelling public policy interest in maintaining those services. Tr. pp. 123-124.

4. CONCLUSION

For these reasons, the Attorney General urges the Department to deny any request by Network Plus to shorten the sixty-day notice of termination of service rule. The Attorney General also requests that Network Plus provide all information to Verizon necessary to

transfer customers to new carriers if that becomes necessary and establish a transition priority for those customers who provide safety, health, and welfare services.

Sincerely,

Karlen J. Reed
Wilner Borgella, Jr.
Assistant Attorneys General
Utilities Division

KJR/kr

Enc.

cc: Paula Foley, Hearing Officer (w/4 copies)
D.T.E. 02-15 Service List (w/enc.)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications)	
and Energy on its own Motion pursuant to G.L. c. 159,)	D.T.E. 02-15
§§ 12 and 16, into the regulations, practices, equipment,)	
appliances and service of Network Plus, Inc.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand-delivery or U.S. mail.

Dated at Boston this 7th day of March 2002.

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